

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 24TH AUGUST 2006 / 2ND BHADRA 1928

ST.Rev..No. 142 of 2004()

TA.25/2001 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONER (ASSESSEE/APPELLANT):

M/S. MARE STEEL CASTINGS (P) LTD.,
KALAMASSERY.

BY ADV. SRI.K.B.MUHAMED KUTTY
SRI.K.M.FIROZ

RESPONDENT: (REVENUE/RESPONDENT):

STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. V.V. ASOKAN.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD
ON 24/08/2006, ALONG WITH STRV NO. 184 OF 2004 THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

S.T.REV.CASE. Nos. 142 & 184 OF 2004

Dated this the 24th day of August, 2006.

JUDGMENT

Ramachandran Nair, J.

The questions raised in the two revisions filed by the very same petitioner is whether the Tribunal was justified in confirming the assessment of steel castings under the category “metallic products” under First Schedule to the KGST Act at the rate of 8%. The case of the petitioner is that petitioner is only a casting unit engaged in manufacture of steel castings, which are covered by Entry 2(ii)(h) of the Second Schedule to the KGST Act and taxable at the rate of 4% at the point of first sale in the State. During hearing counsel for the petitioner furnished copy of the leaflet containing product description of the petitioner. It is seen that the petitioner is engaged in casting work and supply of steel castings, such as Nozzle Chest (Turbine Part), Crane Wheel, Rope Drums, Throttle Valve Body, Hydraulic Cylinder with Rubber Moulding Machinery etc. Apart from producing the copy of the leaflet containing product description, the petitioner has produced the detailed assessment order issued by the Assessing Officer

under the KGST Act for the year 2000-01, wherein the products are identified by the Officer as Steel Castings and assessed at lower rate of tax at 4% under Second Schedule to the KGST Act. However, the assessment for the earlier year 1994-95 got confirmed by the Tribunal's order at the rate applicable to metallic products and hence these revisions. From the assessment order produced for the year 1994-95 itself, we find the Officer has dealt with despatch of three consignments by the petitioner and in all, the product is described as steel castings. Therefore there can be no dispute that the products manufactured and sold by the petitioner are steel castings. The reason why the Tribunal sustained the assessment under category "Metallic Product" under the First Schedule is on the ground that petitioner is engaged in machining of the product, thereby the casting loses its identity. Even though petitioner relied on the decision of the Supreme Court reported in **Bengal Iron Corporation v. Commercial Tax Officer** ((1993) 90 STC 47) and **Vasantham Foundary v. Union of India** ((1995) 99 STC 87), the Tribunal following the orders for earlier

years, held that the products sold by the petitioner are finished products, which are commercially different from steel castings. Therefore the assessment is confirmed under Entry 119 of the First Schedule to the KGST Act, which provides for tax on metallic products. We are unable to accept the reasoning of the Tribunal, because Entry 2(ii)(h) of the Second Schedule provides for tax on “discs, rings, iron and steel castings”. These are certainly products in themselves. The case of the petitioner is that petitioner does not do machining work involving any addition to the products and it is the customer who does it. Special Government Pleader submitted that in some cases petitioner has charged machining charges from customers. Counsel appearing for the petitioner submitted that the machining charges recovered is for the work done to suit the requirement of the customer outside. We do not think even if machining is done by the petitioner, the same will take the product outside Entry 2(i)(h), and the product ceases to be steel casting. For example, if one side of steel casting valve is grinded to fit in the system, it is still a valve made

of steel casting. Therefore machining done on steel casting to suit the requirement of the customer, like grinding, drilling or fixing minor components do not take the product outside steel casting. The question is whether there is substantial addition after the casting work, so that the product becomes commercially different. The department has no case that the petitioner has done any such major improvement on the steel casting and the receipts analysed in the assessment does not disclose it. However, if substantial improvement is done on steel casting, then probably it becomes iron and steel product and can be called a metallic product only when modifications including addition of other metals are done to the product. The pattern of business is stated to be the same and it is seen from the detailed order issued by the assessing officer himself for the year 2001-02, the petitioner's claim is seen accepted.

In such circumstances, we find the product sold by the petitioner is only steel casting and therefore we reverse the order of the Tribunal and direct assessment of the product under item No.2(ii)(h) of the

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Second Schedule to the KGST Act.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(K.M. JOSEPH, JUDGE)

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K.S.RADHAKRISHNAN & K.M.JOSEPH, JJ.

W.A. No. OF 200

JUDGMENT

Dated this the day of February, 200.